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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,825	12/28/2000	John Alson Hicks III	BS00-216	5201
38516	7590	05/16/2006	EXAMINER	
SCOTT P. ZIMMERMAN, PLLC PO BOX 3822 CARY, NC 27519			SALTARELLI, DOMINIC D	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/749,825	Applicant(s) HICKS ET AL.	
	Examiner Dominic D. Saltarelli	Art Unit 2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-51.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) _____.
13. ☐ Other: _____.


JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because: First, applicant argues that claims 1, 3, 9, 30, and 36, which were rejected under 35 U.S.C 112 first paragraph, are fully supported by the originally filed specification. While the examiner is withdrawing the rejections made to claims 3, 9, and 36, the rejections for claims 1 and 30 stand. The very passages which applicant cites from the originally filed specification clearly teach something quite different than what applicant is attempting to claim. The shared communications link from the switch port to the tuners is used only for sending control information from the data switch to the tuners, and not for sending content items from the tuners to the data switch, as pointed out by the examiner in the previous action. Therefore, it is the port to which the demodulator is connected by which the tuners send content items to the data switch, as opposed to the claim language.

Next, applicant argues that neither Humpleman nor Edens disclose "a mass storage device coupled to a switch port, a demodulator coupled to another switch port, and a shared communications link to a third switch port of the data switch, the shared communications link shared amongst the multiple tuners, wherein the multiple tuners each share the communications link to communicate information to the third switch port" (applicant's remarks, page 16 last paragraph). In response, it is the proposed combination of Humpleman and Edens meets the claimed limitations, and not any one reference considered by itself. It is improper to analyze references on a piecemeal basis and ignore the combination set forth as a whole. The Humpleman reference establishes a system utilizing a multi-port switching apparatus at its center for interconnecting media sources with media devices. The inclusion of the mass storage device disclosed by Edens would naturally be connected to one of the ports of the multi-port switching apparatus disclosed by Humpleman in order to add it to the disclosed system. Further, Edens teaches connecting all available tuners, not just some tuners, but all tuners, together over a shared bus, which is used to communicate with a multi-port switching device as described in the previous action, and thus when combined with Humpleman, provides the structure necessary to meet the claimed limitation. Applicants reasoning that because the NIU's of Humpleman are not connected to the ring topology of Eden's is irrelevant, because Humpleman and Eden are two distinct references, so there is simply no way they could be connected prior to a combination to show obviousness. Again, it is this proposed combination which must be considered, and not the references individually. Further, it must be noted that this claimed limitation was also properly rejected under 35 U.S.C. 112 first paragraph as failing the written description requirement and must be removed regardless..